

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Preston Stone, Chair
Dallas Draper, Vice Chair

Thomas F. Stewart, Member
Elaine Allen, Member
Lynn Willard, Member

Minutes Tuesday, April 28, 2015

Minutes of the Special Meeting of the Lincoln County Commission held at 9:00 A.M. on April 28, 2015 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Stone called the Special Meeting of the Board of County Commissioners to order at 9:00:03 AM.

2. Roll Call

Roll Call.

Present: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

3. Invocation

The invocation was presented by Commissioner Stone.

4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary,

Action: Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

6. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation, Section 10-15-1, Sub-paragraph H(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-paragraph H(8).

Paul Melendres, of Melendres and Melendres, acting as attorney for Lincoln County joined the meeting telephonically.

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

New or Updated Matters since last report = *

1. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-200701364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 18,

2013, and Stipulated Judgment was entered June 4, 2014 in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014, and Judge John F. Davis was assigned Aug. 3, 2014.

2. *Greentree Solid Waste Authority v. Lincoln County D-1226-CV-2014-00095*. Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Mr. Paul Melendres has been retained by the County. Hearing on All Pending Motions took place Nov. 20 before Judge Ritter, who found Mr. Beauvais had a conflict of interest and was disqualified from representing GSWA. GSWA has retained Robert Doughty as new counsel Dec. 13, 2014. Hearing regarding 1) GSWA's Motion First Amended Verified Emergency Motion Seeking Further Relief on GSWA's Request for Preliminary Injunction Concerning the Rate at which the County Will Bill and 2) Lincoln County's Motion for Sanctions is scheduled for May 12, 2015 at 9 a.m.

3. *Greentree Solid Waste Authority v. Lincoln County, et. al. D-0101-CV-2013-00104*. Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. GSWA's Brief in Chief filed Sept. 9, 2014. Record Proper was filed Sept. 25, 2014. Alto Lakes Water and Sanitation District's and Lincoln County's Joint Response Brief was filed with the Court of Appeals Oct. 24, 2014. GSWA filed its Reply Brief Dec. 1, 2014. The case has been submitted to a panel of judges for decision and the County received Notice of Submission from the Court of Appeals Jan. 2, 2015.

4. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041*. Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 et. al. and H-272 et al (T) and H-50-1 into H-272 et. al. (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.

5. *Wesmax, Ltd. V. Paul Baca, Lincoln County Assessor D-1226-CV-2014-00188* Appeal of the Final Order from Lincoln County Valuation Protest Board. Appeal filed Oct. 8, 2014. Case assigned to Basham & Basham/Dwyer. Record of Appeal and Transcript of Proceedings was filed Oct. 23, 2014.

Tort Claims Notices Received or Threatened

2015

Cherry, Doris – Tort Claim Notice posted in Lincoln County News Jan. 1, 2015 stating possible Civil Rights Violation lawsuits regarding alleged Americans with Disabilities Act non-compliance in remodeling the Lincoln County Courthouse buildings.

McDaniel, Carl – Tort Claim Notice received Jan. 23, 2015 alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

UNM Hospital-Prins, Chad – Tort Claim Notice received Feb. 26, 2015 in which UNM Hospital seeks reimbursement of expenses incurred while Lincoln County Detention Center inmate Prins was on furlough.

Sehorn, Sean M. – Tort claim Notice received March 2, 2015 alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

Lavin, Erica L. and Rathgeber, Jack – Tort Claim Notice received March 2, 2015 alleging Constitutional Rights were violated resulting in wrongful termination.

Hanley, Constance – Tort Claim Notice received March 20, 2015 from attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

Capitan Iron Mine through A. Blair Dunn – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

Chavez, Billy – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range 16E, tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

***Preston, DeAnna** – Lincoln County Sheriff's Deputy – Threatened Litigation on April 22, 2015 through attorney J. Robert Beauvais against the County of Lincoln in reference to Dep. Preston's Disciplinary Action Dispute.

2014

Ramos, Aaron – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

Millerden, Kenneth and Anita – Tort Claim Notice received May 9, 2014 alleging negligence from staff at Lincoln County Medical Center during pre-partum care for their infant son.

Ogden, John D – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at Lincoln County Detention Center on March 11, 2014.

Rounds, Christopher – Tort Claim Notice received June 4, 2014 alleging being held in Lincoln County Detention Center without being advised of his charges.

Herbert, Crystal – Tort Claim Notice received June 23, 2014 alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

Class Action – Tort Claim Notice received June 23, 2014 alleging false imprisonment, false arrest, deprivation of rights at Lincoln County Detention Center that arise with Immigration and Customs Enforcement charges.

Atwell, Stacey – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

McGarry, Sean – Tort Claim Notice received July 25, 2014 alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitán Police Department.

Ramos, Aaron – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at Lincoln County Detention Center.

Lambert, David and Bonnie – Tort Claim Notice received Sept. 8, 2014 by attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

Rider, Edward Allen and Moorhead, Brennon – Tort Claim Notice received Oct. 20, 2014 by attorney W. Chris Nedbalek alleging Lincoln County Narcotics Enforcement Unit officers destroyed items in a home.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Oct. 24, 2014 by attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8th Amendment Rights.

Ryen, Allen – Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

McMurray, Cody – Tort Claim Notice received Nov. 6, 2014 by attorney W. Chris Nedbalek alleging lack of adequate medical care at Lincoln County Detention Center.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging inadequate medical care and overcrowding at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

Long, Cameron – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging mistreatment by an Officer with Adult Probation and Parole.

McClarnon, Brian – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging violations of U.S. Constitutional Amendment rights.

Diana Martwick, 12th Judicial District Attorney – Tort Claim Notice received Nov. 25, 2014 alleging lack of adequate office space provided by the County of Lincoln.

Inmate Group – Tort Claim Notice received Dec. Dec. 22, 2014 by attorney W. Chris Nedbalek alleging inmates were mistreated at Lincoln County Detention Center.

2013

Allen, Katherine Elizabeth – Notice of Tort Claim received Sept. 12, 2013 from Katherine Allen against Lincoln County Detention Center for alleged injuries sustained during transport.

Borrego, Albert – Tort Claim Notice received from attorney Gary Mitchell on June 14, 2013, alleging continued harassment to Albert G. Borrego by police while responding to a noise complaint at Mr. Borrego's residence on February 28, 2013, and a separate incident resulting in Mr. Borrego's arrest on March 5, 2013, due to an outstanding warrant, during which Mr. Borrego allegedly sustained injuries while in custody due to an existing broken back injury. Claim has been denied by NMAC.

Espinoza, Robert – Tort Claim Notice received from Robert Espinoza on June 4, 2013, alleging property damage from vehicle accident while Linda Mullins, driving the LC Senior Center meal delivery van ran off road hitting chain link fence, poles and railroad ties.

Harrisburg Documents – Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

Ramos, Aaron – Tort Claim Notice received by attorney Robert J. Beauvais on April 18, 2013, (correspondence dated September 13, 2011) alleging concerns about Mr. Ramos' safety and welfare and violation of his U.S. Constitutional rights.

Silva, Elmo - Tort Claim Notice received from attorney Richard Marquez November 6, 2013. Alleges false imprisonment for Mr. Silva, who was sentenced in the 12th Judicial District Court to 38 years filed on July 3, 1990.

Action: Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 9:02:52 AM.

Chair Stone recessed the Closed Session and reconvened the Regular Meeting at 10:20:47 AM.

Commissioner Draper attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

7. Greentree Solid Waste Authority items for consideration/action:

1. Re-negotiation of the current Joint Powers Agreement should the County of Lincoln elect to remain a full member of Greentree Solid Waste Authority: **TABLED.**
2. Potential Action on Rates for Solid Waste Collection Services in Lincoln County outside municipalities and Alto Lakes Water and Sanitation District by Resolution 2014-40: **TABLED.**
3. Consideration of Options:
 - a. Issue Third Party Request for Proposal (RFP) for County of Lincoln Solid Waste Services: **TABLED.**
 - b. Negotiation of Joint Powers Agreement and the status of the County of Lincoln should an RFP for a Third Party Contract for Services be sought.
4. Consideration/Action of a possible advance of rate-payer funds from the County of Lincoln to Greentree Solid Waste Authority, and conditions for any such advance required by the County of Lincoln.
5. Any and all other items pertaining to Greentree Solid Waste Authority and the County of Lincoln.
6. Consideration/Action pertaining to a Settlement Agreement between Greentree Solid Waste Authority and the County of Lincoln.

Nita Taylor, County Manager provided a copy of the Settlement Agreement and Release negotiated by attorney's representing GSWA and Lincoln County. Ms. Taylor stated GSWA's Board met on April 27, 2015 and tentatively agreed to the terms of the agreement as presented.

There was a lengthy discussion regarding Section 5 of the agreement titled "County Settlement Report" containing two options. Option A defined a settlement payment of \$78,229.72 from Lincoln County to GSWA to assist with the decrease of income associated with the rate differential. Option A also contained a provision for GSWA to reimburse certain customers for an additional cost of \$10,165. Option B defined a settlement payment of \$75,987.60 with the County responsible for reimbursements to customers.

Joe Lewandowski, GSWA Operational Consultant explained there were 149 customers entitled to a refund for duplicate payments made to GSWA and Lincoln County and 1084 customers entitled to a reimbursement based on the rate differential. Mr. Lewandowski expressed belief the County was best able provide refunds through credits to current billing.

Chair Stone stated GSWA had previously agreed to reimburse customers for duplicate billing and the rate differential. Mr. Lewandowski clarified while there was a prior agreement to reimburse customers, the method of reimbursement was not established.

Ray Dean, Chair of the GSWA Board discussed Options A and B and expressed support for Option B suggesting the best course was for the County to credit reimbursement amounts to current billings.

Punkin Schlarb, Finance Director expressed concern about Lincoln County issuing refunds for payments made to GSWA. Ms. Schlarb questioned the source of documentation necessary to process credits and the potential impact on the County's gross receipt tax responsibilities. Ms. Schlarb also expressed concern about the staff time required to accomplish posting and tracking refunds.

Debra Ingle, GSWA Operational Supervisor reminded an unknown number of customers had made partial payments either to GSWA or Lincoln County based on their past payments at the higher rate.

Motion: Approve the Settlement Agreement including the dismissal of legal action as stated in the agreement and the approval of Option B of Section 5 for Lincoln County to process reimbursements for duplicate or overpayments, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart

Mr. Lewandowski suggested GSWA issue Lincoln County a Non Taxable Transaction Certificate for the revenue associated with the necessary reimbursements to alleviate the need for either entity to adjust Gross Receipts reporting.

Ms. Schlarb requested a recess to consult with the auditor for Lincoln County's budget process.

Chair Stone recessed the Special Meeting at 11:02:01 AM and reconvened at 11:17:35 AM

Ms. Schlarb stated it was the auditor's opinion the County could accept a lump sum payment from GSWA for refunds and then apply credit to current accounts. Ms. Schlarb reminded the Finance Department was working on both the annual audit and the budget for the next fiscal year. Ms. Schlarb stated additional work to process the reimbursements would be particularly burdensome to staff at this time.

Commissioner Willard withdrew the motion.
Commissioner Stewart concurred and withdrew his second.

Motion: Approve the Settlement Agreement to include Section 5 Option A with an amendment to reflect \$5082.50 for reimbursement of 149 duplicate payments to be processed by GSWA as soon as possible with remaining reimbursements to be issued within 90 days, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Attorney Melendres reminded any payment of settlement by Lincoln County would not occur until GSWA filed motions to dismiss all legal actions.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

6. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation, Section 10-15-1, Sub-paragraph H(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-paragraph H(8). - Continued

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as previously stated. **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and reconvened the Closed Session at 11:33:02 AM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 11:46:56 AM.

Commissioner Draper attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

8. Discussion of funding options for Lincoln County Medical Center's Renovation and Expansion Plan.

Ms. Taylor contacted RBC Capital Markets to obtain additional information on financing options for the proposed renovation and expansion of LCMC. Eric Harrigan of RBC Capital Markets in Albuquerque joined the meeting telephonically.

Mr. Harrigan stated he could provide some basic information about finance options today and offered to attend the next Regular Meeting for additional discussion. Mr. Harrigan discussed the basic two types of bonds available for financing capital outlay projects. Mr. Harrigan stated General Obligation Bonds required a pledge of property tax revenues while Revenue Bonds required a pledge of gross receipts tax or in some cases revenues from services provided. Mr. Harrigan stated bond repayment required a revenue stream sufficient to service annual debt but also sufficient to provide additional financial cushion or "coverage" in the event of any revenue fluctuation.

Mr. Harrigan suggested the use of a hospital lease payment as a dedicated revenue source might preclude any bond sale unless Lincoln County pledged an additional tax revenue stream as a "double barrel" revenue guarantee.

Mr. Harrigan discussed other revenue pledge alternatives including imposition of additional GRT increments or authorization by voters to issue a General Obligation Bond for the imposition of property taxes.

There was additional discussion about the opportunity to impose GRT increments or issue a General Obligation Bond but not impose the tax unless the lease payment failed to service the debt payment.

There was a general consensus to request additional information from RBC Capital at the next Regular Meeting.

Commissioner Willard questioned Al Santos, Administrator about LCMC's efforts to raise funding from private donations.

Mr. Santos stated current pledges and donations amounted to approximately \$600,000. Mr. Santos expressed belief the facility could raise \$5 million through philanthropy and grants over the next three years.

7. Greentree Solid Waste Authority items for consideration/action: - continued

6. Consideration/Action pertaining to a Settlement Agreement between Greentree Solid Waste Authority and the County of Lincoln.

Attorney Morel requested the Board of Commissioners review the GSWA Settlement Agreement as amended today to reflect the changes presented in the Ordinance.

There was consensus the language of the Settlement Agreement was properly amended to reflect the motion as approved and to request GSWA's approval of the amended agreement.

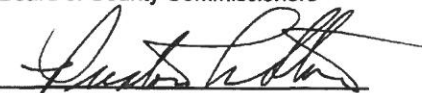
9. Next Meetings:

Special Meeting – May 5, 2015
Regular Meeting - May 19, 2015.

10. Adjournment

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 12:26:02 PM.

County of Lincoln
Board of County Commissioners


Preston Stone, Chair


Dallas Draper, Vice Chair

Elaine Allen
Elaine Allen, Member

Thomas F. Stewart
Thomas F Stewart, Member

F Lynn Willard
F Lynn Willard, Member

ATTEST:

Rhonda Burrows
Rhonda Burrows, County Clerk

May 19, 2015
Date Approved

